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Automobiles: Compulsory Automobile Insurance

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STUDENT NOTES

AUTOMOBILES: COMPULSORY AUTOMOBILE INSURANCE.

A statute of Connecticut provides that if any person by operation of an automobile has injured or killed another, or has damaged property to the extent of \$100, the registration of his car is withdrawn unless he or the owner proves financial responsibility to satisfy any claim up to \$10,000 for injuries to a person, and up to \$1,000 for damage to property.¹ Such proof may be made either by an insurance policy, surety bond, or deposit of cash or security with the state treasurer. In addition, no registration for any car may be issued to the person who did the injury or to the owner, nor may either of them obtain a driver's license until such proof is made. Thus after one accident the security must be supplied, irrespective of negligence and consequent legal liability, by both the driver and the owner if they are different persons. The bond is canceled or the security is returned three years after the deposit, if during that time the depositor has not violated any provisions of the motor vehicle laws, and if no right of action or judgment arising out of the operation of his car is outstanding against him.

Connecticut is not alone among the states in its adoption of this form of insurance. At least forty states have it, in one form or another, and fourteen impose a duty on the owners and drivers of private cars. Of these, six, namely: New York,² New Jersey,³ Rhode Island,⁴ North Dakota,⁵ California,⁶ and Iowa,⁷ passed their statutes in 1929. The reason for such legislation is apparent. The American Road Builders' Association estimates that more than 30,000 persons were killed and 868,000 injured in the world through motor accidents in 1926. Of the fatalities 80% were in the United States. A perusal of the World's Almanac reveals that there were 14,411 auto fatalities in the United States in 1923, while in 1930 the number had risen to 30,042, an increase of over 100% in seven years. Of the combined number of injuries and fatalities it is estimated that one-fourth of those entitled by law to collect fail because of the financial irresponsibility of the defendant.⁸

¹ Laws Conn. 1925, c. 183.

² N. Y. Laws 1929, c. 695, § 94(c).

³ N. J. Laws 1929, c. 116, § 2.

⁴R. I. Laws 1929, c. 1429, § 7.

^cLaws of N. D. 1929, c. 163, § 1.

⁶ 4 Cal. Gen Laws 1929, § 379.

⁷ Iowa Statute 1929, c. 118.

⁸ See Compulsory Automobile Insurance, by Harry J. Loman, in the annals of the American Academy of Political and Social Science, March, 1927.

Although it is difficult to determine the exact amount of success with which compulsory automobile compensation has met in the states which have adopted it, it is safe to assume that it has remedied to some degree this deplorable situation.

From the viewpoint of opponents of the plan there are two principal objections to it: (1) it is unconstitutional; (2) it is unfair and discriminative.

As to the constitutionality of such legislation three questions may be asked: (1) Is it within the police power of the legislature? (2) Are the provisions of the particular act consistent with due process of law? and (3) does the act infringe upon the right to equal protection of the law?

The legislature has power to license the use of automobiles and some courts have held that this power is a valid source of the right to make such laws.⁹ Other courts have sustained the requirement of security upon the ground that the operation of motor vehicles is a privilege which can be prohibited and that what may be prohibited may be granted upon any condition.¹⁰ Other opinions have been to the effect that such a requirement could be predicated upon the state's right to control highways,¹¹ or upon the more general power to enact laws for the public safety and control over inherently dangerous instrumentalities.¹² Concerning due process of law there is little to be said against such legislation. The legislature has always had the power to subject the use of automobiles to the requirement of a license. Therefore, there is no natural right involved which would be impaired by such legislation; the net result being that it merely imposes another requirement upon the obtaining of a license which was not necessary before.

The constitutional objection is further answered by the decision in *Packard v. Banton* where the court said that the use of public streets "for purposes of gain is special and extraordinary, and generally, at least, may be prohibited or conditioned as the legislature thinks proper."¹³

From what has been said it seems clear that somewhere within the broad scope of the police power, which embraces the right to make reasonable enactments for public health, morals and welfare, will be found the power to impose requirements of the kind herein proposed.

Is such legislation unfair and discriminative? This writer cannot bring himself to such a conclusion. Opponents of the plan point out the constitutional right to sue for injuries caused by the wrongful conduct of another and maintain that such rights will bar exclusive

⁹In re Cardinal, 170 Cal. 419, 150 Pac. 348 (1915) (in which is cited Sec. 40, Freund, Police Power, to the effect that security may be required wherever the power to license exists).

¹⁰New Orleans v. Le Blanc, 139 La. 113, 71 So. 248 (1915).

¹¹In re Opinion of the Justices, 251 Mass. 569, 147 N. E. 681 (1925).

¹²In re Opinion of the Justices, 81 N. H. 566, 129 Atl. 117 (1925).

¹³264 U. S. 140 (1924).

compensation with optional compensation as the only alternative. Optional compensation, in turn, discriminates outrageously against motorists as a class, since they pay compensation when not at fault, and damages when they are at fault, with no offsetting benefits. The argument is sound but the premise is wrong. A distinction is to be noted between the kind of statute this contention is based on, and the kind advocated by the majority of those who favor the plan. In the former the taking out of insurance by every motorist is mandatory; while in the latter it is conditioned upon violation of some motor car law, or upon being involved in an accident as provided by the particular statute. No person is compelled to furnish security of any kind until he has violated some provision of the statute. The statute does not compel the motorist class as a whole to furnish security, but only those individuals who are violators of motor car laws and are reckless in their driving. It is submitted that this is in no way unjust or discriminatory.

Such a statute would act as a strong preventive of future accidents. The average wage earning owner who is unable to afford insurance would guard against careless or reckless driving, when he knows that once he has been in an accident or has violated some motor car law (as provided by the particular statute) he will be compelled to furnish security or else be barred from the roads. Certainly even a slight reduction in the number of accidents causing loss of life and limb justifies the increased burden placed upon the type of motorist the statute would require to furnish security.

In summary there are two reasons for having such an act: (1) protection of accident victims, (2) prevention of future accidents. Do these two interests outweigh the slight increase in the burden placed upon the motorist? The answer to this question must be in the affirmative. In conclusion it is proposed that Kentucky adopt a statute similar to that of Connecticut. There is no doubt as to the great need when it is recalled that in Kentucky in 1923 there were only 166 auto fatalities while in 1930 the number jumped to 514,¹⁵—an increase of over 200% in seven years. Certainly the present system of regulating the matter in this State is antique in its methods and wholly inadequate to cope with the problem.

EMERSON SALISBURY.

DOMESTIC RELATIONS: ADULTERY AS A GROUND FOR DIVORCE.

A husband sued for divorce on the grounds of adultery. It appeared that the wife had been guilty of adultery, but such had been condoned by the husband by subsequent cohabitation. Thereafter she again committed adultery. The court held that the second offense revived the original cause of action, and that the husband was entitled to a divorce.¹

¹⁵ World's Almanac (1935 ed.) p. 858.

¹ Wagner v. Wagner, 130 Md. 346, 100 Atl. 364 (1917).